

REMARKS/ARGUMENTS

Favorable reconsideration of this application in light of the following discussion is respectfully requested.

Applicant filed a Request for Continued Examination, along with a Request for Reconsideration, on February 29, 2008. Further thereto, Applicant herewith submits a Declaration of Shigeru Oyama, as provided for in 37 C.F.R. §1.132.

As noted in the Request for Reconsideration, claims 1-6 and 8-11 are now pending in this application. The claims were rejected as obvious over JP- 2001-072764 (hereinafter “JP-‘764”) in view of JP-2001-354542 (hereinafter “JP-‘542”). Applicants amended the claims on December 31, 2007, and the Office issued an Advisory Action on January 29, 2008. Applicants respectfully requests allowance of claims 1-6 and 8-11.

Claim 1 is an independent claim from which claims 2-5 depend. Claim 1 is directed to a cosmetic material comprising a crosslinked product of poly- $\gamma$ -glutamic acid and/or a crosslinked product of a poly- $\gamma$ -glutamic acid salt (hereinafter “crosslinked product”). The crosslinked product has an average particle size of 1 to 50  $\mu\text{m}$ . Claim 6, from which claims 8-11 depend, is directed to a cosmetic material that includes an oiliness agent and a crosslinked product as an oil dispersion modifier. The crosslinked product has an average particle size of 1 to 50  $\mu\text{m}$ .

The JP-‘764 reference discloses a crosslinked polyamino acid used in cosmetics. The JP-‘764 reference discloses the preferred use of polyaspartic acid as the backbone of the polyamino acid, but lists polyglutamic acid and polylysine as alternatives. The JP-‘764 reference teaches a crosslinked polyamino acid having an average particle size of 10 nm to 500  $\mu\text{m}$ .

The JP-'542 reference discloses a moisturizer that comprises poly- $\gamma$ -glutamic acid bridges formed by irradiation. However, the JP-'542 reference does not teach or suggest the particle size of the present invention.

All of the pending claims are directed to a cosmetic material comprising a crosslinked product having an average particle size of 1 to 50  $\mu\text{m}$ . As discussed earlier, the experimental data in the specification supports the nonobviousness of the presently claim invention. Reference Example 1, Reference Example 2, and Comparative Example 1 in the specification all comprise crosslinked product having average particle sizes of 200  $\mu\text{m}$ , above the presently claimed range and within the range of the JP-'764 reference. All were found to have poor cosmetic characteristics. Comparative Example 3 comprises crosslinked product having an average particle size of 0.5  $\mu\text{m}$ , smaller in average particle size than the claimed product, was evaluated and found to have poor cosmetic characteristics. In contrast to these compositions, Examples 1 and 2, both comprising crosslinked products having average particle sizes of 10  $\mu\text{m}$  (within the average particle size of the claimed product) had good cosmetic characteristics.

In the Advisory Action dated January 29, 2007, the Office indicated that these experimental results may show unexpected superior properties for the claimed compositions having average particle sizes of 10  $\mu\text{m}$ . Applicant has conducted additional testing that shows that the claimed compositions exhibit unexpectedly superior cosmetic qualities throughout the 1 to 50  $\mu\text{m}$  range of particle sizes of claim 1. This testing is reflected in the Declaration under 37 CFR §1.132 submitted herewith.

The experiments described in the Declaration were carried out or supervised by Mr. Shigeru Oyama, a researcher with eighteen years of experience in the field of particle technology. In the experiments, Mr. Oyama made crosslinked product of poly- $\gamma$ -glutamic acid according to the method described in Production Example 1 of the specification of the

present application. Mr. Oyama pulverized the product, resulting in crosslinked product having average particle sizes of 48  $\mu\text{m}$ , 33  $\mu\text{m}$ , 21  $\mu\text{m}$ , and 1.2  $\mu\text{m}$ . Mr. Oyama then blended the crosslinked product of differing particle sizes with water, ethyl alcohol, and a perfume at the same mass ratio as that of Example 2 in Table 1 of the specification. The resultant skin cosmetic material was tested to evaluate it for moist feeling, tidy feeling, and neat feeling.

The results of the testing are seen in the table in the Declaration, with Examples 3, 4, 5, and 6 being cosmetic material with particle sizes of 48  $\mu\text{m}$ , 33  $\mu\text{m}$ , 21  $\mu\text{m}$ , and 1.2  $\mu\text{m}$ , respectively. These results show that all of these cosmetics showed good cosmetic properties, as indicated by the score of "A" in the evaluation of "Moist Feeling," "Tidy Feeling," and "Neat Feeling." As also shown in the table, Example 2 from the Specification, with a particle size of 10  $\mu\text{m}$ , shows good cosmetic results. On the other hand, the table shows the results of cosmetic testing for the product of Reference Example 2 in the specification, comprising crosslinked products having average particle size of 200  $\mu\text{m}$ , above the presently claimed range and within the range of the JP-'764 reference. This product did not show good cosmetic results. Likewise, Comparative Example 3, comprising crosslinked product having an average particle size of 0.5  $\mu\text{m}$ , smaller in average particle size than the claimed product, is shown, and found to have poor cosmetic characteristics.

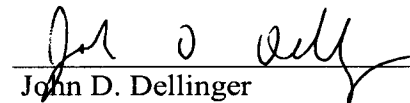
As shown by the experiment in the Declaration of Mr. Oyama, and in the specification, cosmetic materials of the present invention comprising crosslinked product having average particle sizes of 1 to 50  $\mu\text{m}$  have superior cosmetic properties. Cosmetics with crosslinked product having particle sizes outside the claimed range show poor cosmetic properties. It is surprising that cosmetic materials with particle sizes within the claimed range are superior in the measured cosmetic properties. These unexpectedly superior results show the nonobviousness of the claimed cosmetic materials.

The claimed cosmetic materials all comprise crosslinked products having average particle sizes of 1 to 50  $\mu\text{m}$ , and cosmetic materials within this range have superior cosmetic properties as compared to those outside that range, including the broader range disclosed in the JP-'764 reference. Further, the JP-'542 reference cannot remedy the inadequacies of the JP-'764 reference, as it fails to teach crosslinked products having average particle sizes of 1 to 50  $\mu\text{m}$ . Accordingly, Applicant respectfully requests the withdrawal of the rejections of claims 1-6 and 8-11, and the allowance of these claims.

In light of the above discussion, the present application is believed to be in condition for allowance. An early and favorable action to that effect is respectfully requested.

Respectfully submitted,

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